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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/512,260

02/24/2000

Lynn M. Adams

03037.86702

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10/09/2002

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EXAMINER

DEBERRY, REGINA M

ART UNIT

PAPER NUMBER

1647

DATE MAILED: 10/09/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/512,260

Applicant(s)

ADAMS ET AL.

Examiner

Regina M. DeBerry

Art Unit

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 August 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 8-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-34 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Status of Application, Amendments and/or Claims***

The amendment filed 07 August 2002 (Paper No. 11) has been entered in full.  
The Formal Drawings filed 07 August 2002 (Paper No. 11) have been received.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Withdrawn Objections And/Or Rejections***

The objection of the specification as set forth at pages 2-3 of the previous Office Action (07 May 2002, Paper No. 10) is *withdrawn* in view of the amendment (07 August 2002, Paper No. 11).

The rejection of claim 7 under 35 U.S.C. 112, first paragraph as set forth at pages 3-4 of the previous Office Action (07 May 2002, Paper No. 10) is *withdrawn* in view of the amendment and Applicant's arguments (07 August 2002, Paper No. 11).

**Claim Rejections - 35 USC § 102**

Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Tsui *et al.*, U.S. Patent No. 5,776,677. The basis for this rejection is set forth at page 5 of the previous Office Action (07 May 2002, Paper No. 11).

Applicant's arguments have been fully considered. Applicant states that Tsui does not teach every element as set forth in amended claims 1 and 2. This is not found persuasive. Comprising 18 amino acid residues of SEQ ID NO:1, reads on a sequence that has to comprise at least those 18 amino acids of SEQ ID NO:1, but can include other amino acid residues on either side of SEQ ID NO:1. The same holds true for SEQ

ID NO:2 in claim 2. Tsui teaches amino acid sequences (100% identical) comprising SEQ ID NO:1 and SEQ ID NO:2. Tsui anticipates the claims because claims 1 and 2 still read on open language (comprising).

### **Claim Rejections - 35 USC § 103**

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsui *et al.* U.S. Patent No. 5,776,677 in view of Welsh *et al.*, WO 95/25796 (IDS, Paper No. 4) and Langel *et al.*, U.S. Patent No. 6,025,140. The basis for this rejection is set forth at pages 6-7 of the previous Office Action (07 May 2002, Paper No. 11).

Applicant's arguments have been fully considered but not deemed persuasive. The rejection is based on Tsui's teachings of sequences comprising SEQ ID NO:1 and SEQ ID NO:2. As was stated in the last Office Action, because of Tsui's teachings of the instant sequences, it would be obvious to modify the instant invention based on Welsh's teachings regarding truncated CFTR polypeptides and Langel's teachings of membrane-penetrating peptide sequences.

The scientific reasoning and evidence as a whole indicates that the 102(e) and 103(a) rejections should be maintained.

### **Conclusion**

No claims are allowed.

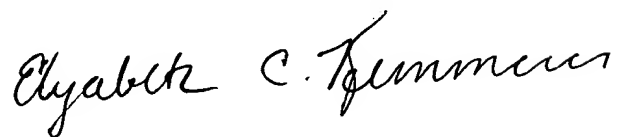
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina M. DeBerry whose telephone number is (703) 305-6915. The examiner can normally be reached on Mondays-Fridays 8:00 a.m. - 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on (703) 308-4623. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



RMD  
October 4, 2002



ELIZABETH KEMMERER  
PRIMARY EXAMINER